

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

OAH No. L 2007030899

AMBER L.,

Claimant,

vs.

KERN REGIONAL CENTER,

Service Agency.

DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on May 23, 2007, in Bakersfield, California. Amber L. (Claimant) was present at the hearing and represented herself with the assistance of her mother, Christina W.¹ Kern Regional Center (KRC or Service Agency) was represented by Jeffrey F. Popkin, L.C.S.W., A.C.S.W., C-A.S.W.C.M., Associate Director for the Service Agency.

Oral and documentary evidence was received and argument was heard. The record was closed and the matter was submitted for decision on May 23, 2007.

ISSUE

Does Claimant have a developmental disability entitling her to regional center services?

///
///
///
///

¹ Initials are used in lieu of Claimant's and her mother's surnames in order to protect their privacy.

FACTUAL FINDINGS

1. Claimant is a 20-year-old female. She claims to be eligible for regional center services based upon a diagnosis of epilepsy.

2. KRC determined that Claimant is not eligible for regional center services because her “seizures appear to be controlled and [she is] not considered substantially handicapped.”

3. Claimant suffered her first tonic/clonic (also called “grand mal”) generalized seizure at age 10 and, since that time, she has had intermittent seizures. On November 24, 1997, she was examined by Imdad N. Yusufaly, M.D. On that date, Dr. Yusufaly diagnosed Claimant with “[p]ossible complex-partial epilepsy with secondarily generalized tonic-clonic seizures.”

4. Claimant previously received regional center services at Inland Counties Regional Center (ICRC) under a diagnosis of epilepsy. She was a consumer of ICRC from a date undisclosed by the evidence until 2004, when her family moved to North Carolina. On June 17, 2003, at an annual review while she was a consumer of ICRC, the following was noted:

(a) In the “Independent Living Skills Domain,” Claimant was “able to perform all self-help skills independently,” but required supervision when taking her medication. She was able perform household chores, including cooking.

(b). In the “Social Domain,” Claimant was “friendly with others, but [was] easily agitated and her feelings [were] easily hurt by her peers.” She tended to get along better with adults. She did exhibit some unacceptable behaviors, such as swearing or yelling to interrupt others, which occurred randomly.

(c). In the “Emotional Domain,” Claimant had a history of depression and was receiving counseling services through Riverside County Mental Health in her Special Education Day class at Temescal Canyon High School.

(d). In the “Communication Domain,” Claimant’s speech and language skills were within normal limits. However, she did deviate from the main topic of conversation and had to be redirected to the topic.

(e). In the “Cognitive Domain,” Claimant was able to read, write and perform multiplication. Although she was described as “intelligent,” her “mental and behavior problems cause[d] a delay in her academic skills.”

(f). Claimant had “a diagnosis of epilepsy,” and continued to experience “Grand Mal seizures, absent seizures and petit mal seizures approximately every two weeks.” These seizures would occur inconsistently. Her last seizure occurred at the end of May 2003,

approximately two weeks prior to the annual review. Claimant was taking Depakote for her seizures.

5. After Claimant moved to North Carolina, she was under the care of a neurologist who prescribed medication to control her seizures. After her family moved to Bakersfield, California in May of 2006, Claimant requested that her case be reactivated at KRC.

6. On December 8, 2006, Claimant was referred by her physician for a neurological consultation with Jian Lin, M.D., in order to evaluate her seizures and headaches. She reported to Dr. Lin that her last seizure was in November of 2006. At the time of the consultation, Claimant was taking Tegretol to control her seizures. Dr. Lin's impressions were that Claimant suffered from epilepsy and migraines.

7. On December 18, 2006, Claimant underwent a detailed initial interview at KRC. That interview revealed the following:

(a). Claimant lives with her mother, who is disabled, having been diagnosed with epilepsy and degenerative nerve disorder. Claimant's mother is a regional center client.

(b). Claimant has "grand mal" seizures which are unpredictable and occur primarily during nighttime sleep. When she is awake, she has episodes of shaking and staring or being unresponsive to her environment. These episodes can last up to three minutes. After a seizure, Claimant becomes lethargic and sleeps. She reports having seizures several times per day. Her last seizure occurred on December 10, 2006, eight days prior to the interview. She is currently taking Tegretol to control her seizures.

(c). In the "Independent Living Domain," Claimant is able to cook, make her bed, set the table, mop, do laundry, wash dishes and vacuum. She dresses and feeds herself. However, she has difficulty counting money and does not know how to use a checkbook or credit cards. She is unable to use public transportation and must rely on somebody to transport her.

(d). In the "Social Domain," Claimant is friendly and interact with others, but has difficulty making and keeping friends.

(e). In the "Cognitive Domain," Claimant is a poor speller, but can do math calculations and a little algebra, and she likes to read. However, she has difficulty gauging time in order to determine how much time has elapsed. She has a poor memory and requires written instructions. She forgets to take her medications and forgets to eat.

(f). In the "Communication Domain," Claimant is able to communicate well in a complex conversation. However, she frequently deviates from the main topic and needs frequent redirection.

8. On December 12, 2007, Claimant was examined by Arnold Chun, M.D., M.P.H., medical consultant for the Service Agency. Dr. Chun noted that Claimant had a history of seizure activity, with “grand mal” episodes occurring primarily during her sleep cycle and episodes of “staring off” or of being unresponsive to her environment during waking hours. He also noted that Claimant was taking Tegretol for seizure control. He further noted that Claimant was unable to drive a vehicle and lived with her mother, who made certain she took her medications and kept her appointments.

9. Although Dr. Chun recognized that Claimant was a prior regional center consumer, he stated that “it is not clear . . . [on] what basis she was found eligible.” Under his Diagnostic Impressions, Dr. Chun stated, “As far as her seizures are concerned, I don’t have a good picture of how debilitating these seizures might be. . . . With such an incomplete database, I would be reluctant to make her eligible for services.”

10. On December 12, 2007, at the request of the Service Agency, Kimball Hawkins, Ph.D., performed a psychological evaluation on Claimant to assist in determining her eligibility for regional center services. Dr. Hawkins administered the Wechsler Adult Intelligence Scale - III (WAIS-III), the Wide Range Achievement Test - Revision Four (WRAT-IV) and the Bender Gestalt - II. Claimant’s scores on the WAIS-III and the WRAT-IV were in the low average to borderline range, and her scores on the Bender Gestalt-II were in the low average range. There was no evidence of mental retardation.

11. Dr. Hawkins diagnosed Claimant’s condition as follows:

Axis I: ²	Depressive Disorder, Not Otherwise Specified (NOS) Learning Disorder
Axis II:	No Diagnosis
Axis III:	Seizure disorder reported

12. Dr. Hawkins recommended that Claimant be referred to the clinical team if there was a question of eligibility and also recommended that Claimant be referred to Dr. Chun regarding the question of her eligibility based on a diagnosis of seizure disorder.

13. On January 25, 2007, KRC’s Diagnostic Team determined that Claimant had diagnosis of: Learning Disorder, NOS; Seizure Disorder; and Depressive Disorder, NOS. Under the Section entitled “Substantial Handicap,” the Diagnostic Team indicated that Claimant’s “major impairments of cognitive and/or social functioning areas are: Learning; Self-Direction; Capacity for Independent Living; and Economic Self-Sufficiency.” The

² The diagnoses are derived from the Diagnostic and Statistical Manual of Mental Disorders, 4th ed., Text Revised (DSM-IV-TR), published by the American Psychiatric Association. The Administrative Law Judge takes official notice of the DSM-IV-TR as a highly respected and generally accepted tool for diagnosing mental and developmental disorders.

Diagnostic Team recommended that Dr. Chun be provided the “data needed to finalize eligibility on the basis of epilepsy.”

14. At the administrative hearing, the credible testimonies of Claimant and her mother established the following:

(a). Claimant had seizures while in school and was unable to fully participate. She has not completed high school. (Testimony of Christina W.)

(b). Claimant has had seizures at the bus stop and was unable to get on her designated bus. (Testimony of Christina W.)

(c). Claimant’s mother must still assist Claimant in taking her medication at the required times. (Testimony of Christina W.)

(d). Claimant continues to have seizures several times per day, during which she “just stares.” She also has tonic/clonic seizures “a couple of times” per week. (Testimony of Christina W.)

(e). Claimant has trouble concentrating while writing and while speaking on the phone. She has episodes where she cannot recall what she has been doing for the previous hour. She does not like to go outside for a walk, fearing that she won’t realize where she had just been. (Testimony of Amber L.)

(f). Claimant relies on her mother to track when Claimant’s menstruation will begin and to remind her to change her sanitary pads. (Testimony of Amber L.)

15. At the fair hearing, the evidence did not establish any changes in Claimant’s functioning or seizure history since her status as an eligible regional center consumer in 2004.

LEGAL CONCLUSIONS

1. Claimant suffers from a developmental disability entitling her to regional center services. (Factual Findings 1 through 15.)

2. Throughout the applicable statutes and regulations (Welf. & Inst. Code, §§ 4700 - 4716, and Cal. Code Regs., tit. 17, §§ 50900 - 50964), the state level fair hearing is referred to as an appeal of the service agency's decision. Where a claimant seeks to establish his/her eligibility for services, the burden is on the appealing claimant to demonstrate that the service agency's decision is incorrect. Claimant has met her burden of proof in this case.

///
///
///

3. In order to be eligible for regional center services, a claimant must have a qualifying developmental disability. Welfare and Institutions Code section 4512 defines “developmental disability” as:

[A] disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual, and includes mental retardation, cerebral palsy, epilepsy, autism, and disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

4(a). To prove the existence of a developmental disability within the meaning of Welfare and Institutions Code section 4512, a claimant must show that he/she has a “substantial disability.”

4(b). California Code of Regulations, title 17, section 54001 states, in pertinent part:

(a) “Substantial disability” means:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:

(A) Receptive and expressive language;

(B) Learning;

(C) Self-care;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

5. In addition to proving a “substantial disability,” a claimant must establish that his/her disability fits into one of the five categories of eligibility set forth in Welfare and Institutions Code section 4512. The first four categories are specified as: mental retardation, epilepsy, autism and cerebral palsy. The fifth and last category of eligibility is listed as “[d]isabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.” (Welf. & Inst. Code, § 4512.)³

6. In this case, Claimant has been diagnosed with seizure disorder and epilepsy. She was also a prior consumer of ICRC under a diagnosis of epilepsy. Consequently, Claimant has a condition which could categorically qualify her for services as a person suffering from epilepsy.

7. The evidence also established that Claimant suffers from a substantial disability, as defined by California Code of Regulations, title 17, section 54001. Claimant has demonstrated that her seizure disorder “results in major impairment of [her] cognitive and/or social functioning.” Her seizures have prevented her from being able to participate fully in school; she sometimes cannot recall her previous hour’s activities; she has difficulty gauging time in order to determine how much time has elapsed; she forgets to take her medications and forgets to eat; and she has difficulty making friends. These all demonstrate significant negative impairment of her cognitive and/or social functioning. Additionally, Claimant has significant functional limitations in three or more of the areas of major life activity, set forth in California Code of Regulations, title 17, section 54001. The Diagnostic Team itself noted that Claimant’s “major impairments of cognitive and/or social functioning areas are: Learning; Self-Direction; Capacity for Independent Living; and Economic Self-Sufficiency.” Consequently, Claimant has demonstrated a “substantial disability” which would qualify her for regional center services.

8. Moreover, the evidence established that Claimant’s seizure disorder is not any better controlled since she was a regional center consumer under a diagnosis of epilepsy in 2004. In fact, the seizures are more frequent. Additionally, the negative impact of the seizures on Claimant’s social functioning seems to have increased, since her inability to attend school, her lack of independent transportation and her fear of walking outside have isolated her further.

///
///
///
///
///
///
///

³ Claimant does not assert that she is eligible under the fifth category, nor was any evidence presented which would warrant discussion of this category.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The Claimant's appeal of the Service Agency's determination that she is not eligible for regional center services is granted. The Service Agency shall accept Claimant as a consumer forthwith.

DATED: June 6, 2007

JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.